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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,665	07/28/2003	Kuen-Chu Lai	U 014733-1	5233

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Ladas & Parry
26 West 61st Street
New York, NY 10023

EXAMINER

RIYAMI, ABDULLA A

ART UNIT	PAPER NUMBER
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2616

NOTIFICATION DATE	DELIVERY MODE
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07/09/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Office Action Summary

Application No.

10/628,665

Applicant(s)

LAI ET AL.

Examiner

ABDULLAH RIYAMI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/30/2008 has been entered.

Claim Rejections - 35 USC § 103

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

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3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phaal (US 7164657).

As per claim 1, Phaal discloses a device for observing variations of network packets (see column 2, lines 26-35, network monitoring system), the improvements comprising: a first I/O observer device for analyzing contents of the packets (see figure 2, block 210 and column 4, lines 35-40, monitor server); a first hub for transmitting the packets (see column 4, lines 35-50 and figure 2, blocks 220, 230, 240, 250); a second hub for transmitting the packets (see column 4, lines 35-50 and figure 2, blocks 220, 230, 240, 250); a third hub for transmitting the packets (see column 4, lines 35-50 and figure 2, blocks 220, 230, 240, 250); a first packet extractor having a packet outputting end and a packet receiving end, wherein the packet receiving end of the first packet extractor is connected to the first hub, the second hub, and the third hub, and the packet outputting end of the first packet extractor is connected to the first I/O observer device (see figure 2, block 210 and column 4, lines 35-40, monitor server);

Phaal does not expressly disclose a second I/O observer device for analyzing contents of the packets; a third I/O observer device for analyzing contents of the

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packets; a second packet extractor having a packet outputting end and a packet receiving end, wherein the packet receiving end of the second packet extractor is connected to the first hub, the second hub, and the third hub, and the packet outputting end of the second packet extractor is connected to the second I/O observer device; and a third packet extractor having a packet outputting end and a packet receiving end, wherein the packet receiving end of the third packet extractor is connected to the first hub, the second hub, and the third hub, and the packet outputting end of the third packet extractor is connected to the third I/O observer device.

Phaal discloses that in another preferred embodiment, multiple monitor servers can be implemented wherein each monitor servers can monitor and report the status of a different combination of monitor agents (see column 4, lines 46-50). Phaal discloses through the other embodiment a second I/O observer device for analyzing contents of the packets (see figure 2, block 210, multiple monitor servers); a third I/O observer device for analyzing contents of the packets (see figure 2, block 210, multiple monitor servers); a second packet extractor having a packet outputting end and a packet receiving end, wherein the packet receiving end of the second packet extractor is connected to the first hub, the second hub, and the third hub, and the packet outputting end of the second packet extractor is connected to the second I/O observer device (see figure 2, block 210, multiple monitor servers and different combination of 220,230,240 and 250); and a third packet extractor having a packet outputting end and a packet receiving end, wherein the packet receiving end of the third packet extractor is connected to the first

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hub, the second hub, and the third hub, and the packet outputting end of the third packet extractor is connected to the third I/O observer device (see figure 2, block 210, multiple monitor servers and different combination of 220, 230, 240 and 250).

At the time of the invention it would have been obvious to one of ordinary skill in the art to use Phaal's other embodiment of using multiple monitoring servers (see column 4, lines 46-50) in Phaal's network monitoring system (see abstract and figure 2). The motivation to combine would have been to have an effective flow monitoring system where the cost of monitoring to a point is minimized.

As per claims 2-4, Phaal does not expressly disclose said first I/O observer device is a personal computer, wherein said second I/O observer device is a personal computer and said third I/O observer device is a personal computer; however it is well known in the art to have a monitoring server be on a personal computer. The motivation being, having a network administrators learn the networks configurability.

6. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phaal (US 7164657) in view of Congdon et al. (US 6804233).

As per claim 5-7, Phaal discloses a device for observing variations of network packets (see column 2, lines 26-35, network monitoring system), but does not expressly disclose wherein said packet extractors comprises three network interface card.

Congdon et al. (US 6804233) discloses packet extractors comprises three network interface cards (see column 3, lines 56-67 and column 4, lines 65-67).

Phaal and Congdon et al. are from the same field of endeavor of packet analysis.

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At the time of the invention it would have been obvious to one of ordinary skill in the art to use Congdon et al.'s NIC card in Phaal's network monitoring server (figure 2). The motivation to combine would have been to have multiple network analysis and automatic configuration of multiple NIC cards.

As per claims 8 and 9, the same reasoning applies for the rejection as was describe in claims 1 through 7.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ABDULLAH RIYAMI whose telephone number is (571)270-3119. The examiner can normally be reached on Monday through Thursday 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Abdullah Riyami/

Examiner, Art Unit 2616

/Huy D. Vu/

Supervisory Patent Examiner, Art Unit 2616